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IN THE HIGH COURT OF KARNATAKA AT BANGALORE

Dated : This the 30th day of June, 1998

BEFORE

THE HON'BLE MR. JUSTICE KUMAR RAJARATNAM

WRIT PETITION NO. 42468 OF 1995

BETWEEN :

Syed Kabir Shah, s/o
late Syed Usman Shah,
major, occupation :
contractor and agricul-
turst of Muniradabad,
Taluka Koppal, District
Raichur.

PETITIONER

(By Sri K.S.Savanur, Advocate)

AND

1. Karnataka Appellate Tribunal,
Bangalore, by its Secretary,
M.S. Building, Bangalore-1.
2. Asst. Registrar of Co-operative
Society and Departmental Arbitra-
tor of Co-operative Societies,
Taluka - Koppal, Dist.Raichur.
3. The Raichur Dist. Co-operative
Central Bank. Pvt. Ltd., by its
Managing Director at and Dist.
Raichur.
4. K.Basha Saheb Mayagi, major,
occupation : P.W.D.Contractor
of Munirabad, Taluka Koppal,
Dist. Raichur.

RESPONDENTS

(By Sri B.Veerappa, HCGP for
R-1 and R-2; R-3 - served)

This Writ Petition is filed under Article 226 of the Constitution of India praying to quash Annexure-A and B dated 31.3.87 and the orders at Annexures-C and D dated 29.6.1993 and 30.10.95 respectively.

The petition coming on for hearing this day, this Court made the following :-

O R D E R

The petitioner had availed of an over-draft facility with 3rd respondent-bank for a sum of Rs.75,000/-. The interest to be paid was 19% per annum and 2% penalty if the loan amount was not paid in time. Since this amount is not paid a dispute was raised by the bank. The Arbitrator passed an award holding that the petitioner shall pay a sum of Rs.1,16,580.10 paise towards principal and Rs.12,243/- towards interest upto 31.12.1985. The Arbitrator further held that thus totalling to Rs.1,28,953.10 with interest thereon from 1.1.86 at 21% per annum on the principal loan amount of Rs.1,16,580.10 till the date of realisation. The 2nd respondent also held that the bank is entitled to recover the decretal amount by the sale of movable or immovable properties of the petitioner. The

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award is before me as Annexure-B. Aggrieved by this the petitioner filed an appeal before the Tribunal. The Tribunal also dismissed the appeal in Appeal No.197/90 by an order dated 29.6.1993.

2. Various contentions were raised by the learned counsel for the petitioner Mr. Savanur, ^{none} ~~None~~ of which deserves merit, since admittedly the petitioner was served with notice of the dispute and remained exparte. The 2nd respondent as well as the Appellate Authority has given cogent and convincing reasons based on documents produced by the bank. No interference is called for on this aspect.

3. The learned counsel for the petitioner submitted that the petitioner is an agriculturist and has suffered severe ^{loss on account of} drought and was unable to repay the loan. The learned counsel for the petitioner also submitted that he is prepared to obey to the decree passed by the 2nd respondent, However, submitted that in view of the extraordinary facts and circumstances of the case the contractual rate of interest of 19% per annum

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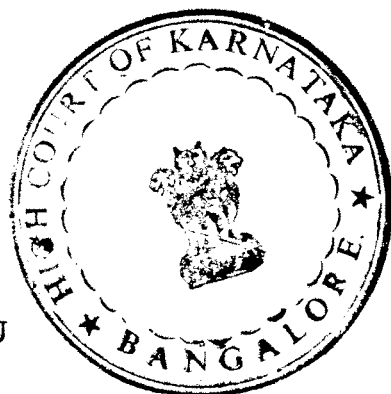
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and 2% penalty for non-payment in time should not be levied on the petitioner after the award was passed. He submitted that the interest after the award should be scaled down to 12% per annum.

4. In the facts and circumstances of the case the award is modified to the extent that the petitioner shall be liable to pay interest on the capital as contracted at the rate of 19% per annum + 2% penalty till the date of award and after that the petitioner shall be liable to pay interest on the capital at the rate of 12% per annum till the date of payment. The petitioner undertakes to pay the amount within a period of three months failing which the order passed by the Arbitrator and the Appellate Authority shall stand revived. The petitioner also undertakes that he will not ^{raise} ~~agitate~~ any further litigation in the Executing Court.

The writ petition is disposed of accordingly.

✓ No costs. *The award is modified accordingly.*



Sd/-
JUDGE